United Nations A/HRC/29/37/Add.3

General Assembly

Distr.: General
6 May 2015

Original: English

Human Rights Council
Twenty-ninth session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns

Addendum

Follow-up to country recommendations: India*

Summary

In the present report, the Special Rapporteur on extrajudicial, summary or arbitrary executions analyses the steps taken by India to implement the recommendations contained in the report made following his visit to the country from 19 to 30 March 2012. During that visit, the Special Rapporteur documented extrajudicial killings by security officers, the State Police, Armed Forces and armed groups. He also reported killings related to communal violence and practices affecting women's right to life as a serious problem in some areas of the country. In addition, he noted a number of challenges at various stages of the accountability process leading to impunity in many instances.

Since the visit, the Government has taken some steps to address human rights violations committed against women and in support of victims of terrorist-related activities. However, vulnerable groups remain at risk of violent and often lethal attacks. Impunity remains a serious challenge, as does the implementation of existing guidelines and directives issued by the courts and national human rights institution. The Special Rapporteur urges the Government to implement the recommendations contained in the visit report insofar as this has not been done.

* The summary of the present report is circulated in all official languages. The report itself, which is annexed to the summary, is circulated in the language of submission only.

GE.15-08934 (E)

1508934

Please recycle

Annex

[English only]

Follow-up country recommendations: India

Contents

		Paragraphs	*Page*
I.	Introduction	1–6	3
II.	Methodology	7–9	4
III.	Violation of the right to life by State actors	10–26	4
	A. Deaths resulting from excessive use of force	10–14	4
	B. The Armed Forces (Special Powers) Act and related legislation	15–19	5
	C. Deaths in custody	20–23	7
	D. Imposition of the death penalty	24–26	8
IV.	Violations of the right to life by non-State actors	27–38	9
	A. Deaths resulting from attacks by armed groups	27	9
	B. Killings related to communal violence	28–30	9
	C. Practice affecting women's right to life	31–38	10
V.	Other challenges	39–55	11
	A. Fight against impunity	39–46	11
	B. Killings of vulnerable persons	47–55	13
VI.	The role of Human Rights Commissions	56–59	15
VII.	Conclusions	60–62	15
Appendix			
	Summary of follow-up to each recommendation		16

I. Introduction

1. The Special Rapporteur on extrajudicial, summary or arbitrary executions conducted a country visit to India from 19 to 30 March 2012. He presented his country visit report to the Human Rights Council at its twenty-third session (A/HRC/23/47/Add.1). The country visit report provided an overview of the findings and 31 concrete recommendations.

2. The present follow-up report contains an analysis of the progress made by India in implementing the recommendations made in the country visit report, based on desk research.

3. During his visit, the Special Rapporteur documented deaths resulting from the excessive use of force, deaths in custody, the imposition of the death penalty, attacks by armed groups, killings related to communal violence and practices affecting women's right to life. He further addressed the fight against impunity, killings of vulnerable persons and the role of human rights commissions, highlighting that the obstacles to accountability should be removed.

4. The Special Rapporteur made a number of recommendations regarding the need to reform laws and policies to ensure the accountability of State actors for violations of the right to life; the establishment of a commission of inquiry into extrajudicial executions in India, which should also serve a transitional justice role; the need to increase the protection of civilians, especially vulnerable groups, through legal reform as well as information and awareness-raising campaigns and increased sensitization and orientation programmes; and the need to strengthen State institutions, including the judiciary and the National Human Rights Commission.

5. Since the visit, measures that have been undertaken to implement the recommendations made. There has been reform at the legislative level, with some bills pending before parliament. The Supreme Court of India appointed a commission on 4 January 2013 to inquire into six alleged cases of extrajudicial executions and to record its findings regarding the antecedents of the victims and the circumstances in which they were killed. The commission was also directed to report on the functioning of the State Police and the Security Forces in the state of Manipur and to make recommendations for keeping the police and security forces within the legal bounds without compromising the fight against insurgencies. The Commission also addressed the larger question on the role of the police and the security forces in Manipur. On 23 December 2012, the Government also constituted a committee to look into possible amendments to the Criminal Law to provide for quicker trials and enhanced punishments for criminals committing sexual assault of an extreme nature against women. The reports of both bodies contain useful recommendations to further strengthen State institutions and the protection of the right to life.[1]

6. However, much remains to be done to address and prevent extrajudicial killings and to ensure accountability. Often, guidelines provided by the courts or the National Human Rights Commission and recommendations by commissions of inquiry remain on paper with little or no implementation on the ground. Impunity continues to prevail with various

[1] See *Extra Judicial Execution Victim Families Association* v. *Union of India* and *Suresh Singh* v. *Union of India*, W.P. (Crl.) No. 129 of 2012, available from http://humanrightsmanipur.wordpress.com/2013/07/24/report-of-the-justice-n-santosh-hegde-headed-commission-appointed-by-the-supreme-court-of-india/ and Report of the Committee on Amendments to Criminal Law, 23 January 2013, available from www.prsindia.org/uploads/media/Justice%20verma%20committee/js%20verma%20committe%20report.pdf.

legislative provisions and practices that hinder full and proper accountability. The result is that vulnerable persons, including women, marginalized communities, human rights defenders, victims and witnesses, continue to remain at risk of violence, often resulting in death.

II. Methodology

7. In paragraph 8 of its resolution 26/12, the Human Rights Council urged States, inter alia, to cooperate with and assist the Special Rapporteur in the performance of his tasks, to supply all necessary information requested by him and to ensure appropriate follow-up to his recommendations and conclusions. In this context, when writing his follow-up reports, the Special Rapporteur requests States to provide him with information on the actions taken on those recommendations. Such information, when provided, helps to ensure a comprehensive report that gives full recognition to all steps taken.

8. The Special Rapporteur recognizes the importance of follow-up reports as a critical component of country visits to investigate allegations of violations of the right to life, and as a principal working method. Country visits are an essential means to obtain direct and first-hand information on human rights violations.

9. The present follow-up report was prepared on the basis of all available information and was completed on 30 April 2015. The Special Rapporteur requested information from the Government and from other actors on the steps that had been taken to implement the recommendations made. The Special Rapporteur thanks the Government of India for its response dated 21 April 2015 and for the information provided. Consultations were also undertaken with domestic and international civil society groups. The Special Rapporteur expresses his gratitude to all stakeholders who contributed to the present report.

III. Violations of the right to life by State actors

A. Deaths resulting from excessive use of force

10. During his country visit, the Special Rapporteur received a series of complaints regarding deaths resulting from the excessive use of force by security officers. The force used, according to the reports, had little adherence to the principles of proportionality and necessity, as defined under international human rights law standards. In the country visit report, the Special Rapporteur referred to India's National Crime Records Bureau statistics, which indicate that, in 2011, there were 109 civilian deaths owing to police firing (See A/HRC/23/47/Add.1, para. 9). The 2013 Bureau statistics indicate that the number of civilian deaths owing to police firing had decreased only marginally, to 103 civilians.[2]

11. In his country visit report, the Special Rapporteur recommended that section 46 of the Code of Criminal Procedure and legislation in all states regarding use of force, including the exceptional use of lethal force, by all security officers should be reviewed to ensure compliance with international human rights law principles (see A/HRC/23/47/Add.1, para. 102). He was especially concerned with section 46 of the Code, as it authorizes law enforcement officials to use "all means necessary" when an arrest is forcibly resisted, without further qualifications, allowing force that goes beyond those

[2] See National Crime Records Bureau, Ministry of Home Affairs, "Crime in India 2013 – Statistics", p. 564.

powers permitted under international human rights law. The Special Rapporteur regrets that the section has so far not been reviewed or amended.

12. The Special Rapporteur also noted in his country visit report that the disproportionate use of force by law enforcement officials was often the cause of death during demonstrations, and specific reference was made to the excessive use of force against demonstrators in the Jammu and Kashmir regions in 2010. The Special Rapporteur takes note of the information provided in the response by the State that there were 2,241 demonstrations in 2010 in Jammu and Kashmir and that, regrettably, not all of them were peaceful. High numbers of civilians, police personnel and security forces were injured in those demonstrations. The State has indicated that, in all instances of death, a First Information Report was lodged and an investigation initiated. This would be an encouraging development. However, the Special Rapporteur emphasizes the need for such investigations to be completed soon, and urges the State to make public all findings from such investigations and ensure that the policing of demonstrations, including non-peaceful demonstrations, is always in compliance with the international human rights standards on the use of force.

13. The country visit report documented the practice of "fake encounters" and the accusations that it had been carried out by the police, the central armed forces, armed forces and the border security forces. The Special Rapporteur notes of the recent conviction of and recommended life sentences for five security officers for the fake encounter that occurred on 30 April 2010, in which three youths were killed by the armed forces. This is a welcome instance of accountability.

14. The country visit report also documented the registration of First Information Reports by security officers after alleged fake encounters, in which they gave their accounts of the events. This often led to the swift closure of cases, as the content of the reports was frequently undisputed. The Special Rapporteur recommended that the registration of a First Information Report should be prompt and mandatory in all cases of suspected unlawful killings and death threats. It was also recommended that an independent mechanism be put in place to monitor the registration of First Information Reports, as well as the punishment of those law enforcement officials who refuse to register them (see A/HRC/23/47/Add.1, para. 110). The Criminal Appellate Division of the Supreme Court of India recently confirmed that, when investigating police encounters in cases of death, as a standard procedure for thorough, effective and independent investigation, a First Information Report should be registered and forwarded to the Court under section 157 of the Code of Criminal Procedure without delay.[3] The Supreme Court issued a number of requirements, many based on the National Human Rights Commission guidelines on encounter deaths and statutory provisions, to be followed when investigating police encounters that result in death of a civilian. No independent mechanism to monitor the registration of First Information Reports exists.

B. The Armed Forces (Special Powers) Act and related legislation

15. In his country visit report, the Special Rapporteur noted that the situation concerning the use of force in India was exacerbated by the implementation of the Armed Forces (Special Powers) Act. The Act is applied in areas that have been declared "disturbed" or "dangerous" to the extent that the use of armed force is deemed necessary. These have included areas of Manipur, Assam, Arunachal Pradesh, Meghalaya, Mizoram, Nagaland

[3] *People's Union for Civil Liberties & Anr. v. State of Maharashtra & Ors*, Criminal Appeal No. 1255 of 1999, decided on 23 September 2014, para. 31 (2).

and Tripur, while in Jammu and Kashmir, a nearly identical piece of legislation known as the Jammu and Kashmir Armed Forces (Special Powers) Act is applied.

16. Particular concern was expressed in the report over the provisions in the Act regulating the use of lethal force, in violation of the international standards on the use of force, and the related principles of proportionality and necessity. The Special Rapporteur also expressed his concern at the protection granted to officers under the Armed Forces (Special Powers) Act and the Jammu and Kashmir Act, where the prosecution of such officers is prohibited unless sanction to prosecute is granted by the central Government. This rarely occurs in practice. Thus, accountability for extrajudicial or arbitrary killings committed by armed forces members is frequently made practically impossible.[4] The Indian Supreme Court upheld the constitutionality of the Act and provided several conditions on the use of the special powers conferred on the Armed Forces by section 4 thereof.[5] This part of the country visit report in particular was strenuously opposed by the Government in its comments thereto, on the basis that the State viewed it as a gross disregard for the Supreme Court (see A/HRC/23/47/Add.7, para. 1). This approach seems not to take into account the fact that the special procedures of the Human Rights Council regularly pronounce on the rulings of domestic courts from all over the world, in line with the established principle of international law that States are internationally responsible for the actions of all their organs (see General Assembly resolution 65/19).

17. Several international bodies and Indian authorities have subsequently also expressed concern over the provisions of the Armed Forces (Special Powers) Act. The Justice Verma Committee, constituted in December 2012 as a result and within a few days of the brutal gang rape and murder committed in New Delhi on 16 December 2012, recommended the continuance of the Armed Forces (Special Powers) Act and similar legal protocols in internal conflict areas be immediately reviewed. The Committee found that the review was necessary in order to determine the propriety of resorting to such legislation in the areas concerned.[6] In July 2014, the Committee on the Elimination of Discrimination against Women called upon India to implement the recommendations of the Justice Verma Committee and to promptly review the continued application of Act and related legal protocols (see CEDAW/C/IND/CO/4-5, para. 13 (a)). The Committee also urged India to amend and/or repeal the Act, so that sexual violence against women perpetrated by members of the armed forces could be brought under the purview of ordinary criminal law and, pending such amendment or repeal, to remove the requirement for government permission to prosecute members of the armed forces accused of crimes of violence against women or other human rights abuses of women, and to grant permission to enable prosecution in all pending cases.

18. In part V, paragraph 5.4 of its report,[7] a commission appointed by the Supreme Court stated that it was time to progressively de-notify areas of the State under the Act, and to withdraw section 144 of the Code of Criminal Procedure. That commission agreed with the Jeevan Reddy Committee created to review the Act. The Committee's report has not been made public, but determined that the Act had become a symbol of oppression, an object of hate and an instrument of discrimination and high-handedness, and that it was highly desirable and advisable to repeal it altogether. In part IV, paragraph 3.10 of its

[4] See *Army Headquarters v. CBI*, 2012 6 SCC 228.

[5] See *Naga People's Movement of Human Rights* v. *Union of India And Others*, Supreme Court of India, 27 November 1997, para. 79 (8).

[6] Report of the Committee on Amendments to Criminal Law, 23 January 2013, available from www.thehindu.com/multimedia/archive/01340/Justice_Verma_Comm_1340438a.pdf.

[7] Available from https://humanrightsmanipur.files.wordpress.com/2013/07/ejevfam.pdf.

report, the commission found that the conditions laid down by the Supreme Court had remained largely on paper only and were mostly followed in violation.

19. The Special Rapporteur, however, regrets that India has not followed the recommendation that it repeal or at least radically amend the Act, as well as the equivalent legislation in Jammu and Kashmir, to ensure that legislation regarding the use of force is brought in line with international human rights law and to remove all legal barriers for the criminal prosecution of members of the armed forces. The Special Rapporteur also recommended that, while waiting for the necessary repeal or amendment of the Act, it must be ensured that the status of a "disturbed area" is subject to regular review and a justified decision is made on its further extension.[8] In that regard, he has been informed that states of the North-East and Jammu and Kashmir regions continue to be declared "disturbed areas", without any deliberation, justification or reference to the scale of insurgency in the respective areas.[9]

C. Deaths in custody

20. In his country visit report, the Special Rapporteur noted that, throughout his visit to the State, several cases of custodial deaths were reported to him. These reports spoke of individuals who had allegedly been unlawfully taken into custody, severely beaten and later died in hospital. Serious concern was expressed at the fact that no steps had been taken to bring the perpetrators to account for the deaths. The National Crime Records Bureau data for 2011 indicated that over 100 deaths had occurred in police custody in India and that none of the 14 police officers against whom formal accusations had been brought were convicted (see A/HRC/23/47/Add.1, para. 29). The 2013 Bureau data indicates that over 100 police custodial deaths were reported and that there was one conviction.[10]

21. The Special Rapporteur welcomed the National Human Rights Commission guidelines on custodial deaths and rapes, which include guidelines on the period within which a death is to be reported, the procedure to be followed and methods to conduct autopsies. The Code of Criminal Procedure (Amendment) Act of 2005 mandates that a judicial inquiry must take place in all instances where any person dies or disappears while in custody of the police or in any other custody. The Special Rapporteur, however, also expressed concern that these provisions are not complied with in practice. This was confirmed the aforementioned commission appointed by the Supreme Court, which, in part IV, paragraphs 4.6 and 4.9 of its report, found that, in the cases before it, magisterial enquiries and judicial enquiries had only been ordered after a lapse of a couple of years; and that the National Human Rights Commission guidelines on search, seizure and inquests were not being followed in instances of police action resulting in death.

22. The Special Rapporteur made a recommendation that autopsies be carried out in conformity with international standards and that the families of victims be given full and easy access to autopsy reports, as well as death certificates and other relevant documentation to allow them to proceed with the closure of the cases (see A/HRC/23/47/Add.1, para. 117). The commission appointed by the Supreme Court observed serious lapses on the part of the police during their operation and investigations.

[8] Section 3 of the Act allows the Governor of a state or the Administrator of a union territory of the central Government to declare the whole or part of a state or union territory to be a disturbed area.

[9] At the time of writing, there were ongoing discussions in the Jammu and Kashmir region on the possible revocation of the Jammu and Kashmir Act.

[10] See National Crime Records Bureau, Ministry of Home Affairs, "Crime in India 2013 – Statistics", p. 554.

and recommended that post-mortems be conducted as quickly as possible after incidents, that post-mortems in encounter cases should be video recorded, and that a hand wash of the deceased must be taken and sent for forensic analysis, which is necessary because of the frequent contention by security forces that the deceased fired at them.

23. The Special Rapporteur also recommended that India ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, and that it swiftly enact the Prevention of Torture Bill and ensure its compliance with the Convention. The Bill was introduced in 2010 but, despite provisional steps taken to enact it, no further steps seem to have been taken in this regard.

D. Imposition of the death penalty

24. In his country visit report, the Special Rapporteur noted his concern regarding the execution that took place in 2012, the first since 2004, when a de facto moratorium on executions was introduced. Further concern was noted in relation to legislative provisions that provided for the imposition of the death penalty for offences that did not comply with the "most serious crime" provision under international law, and the extension of offences for which the death penalty may be imposed. In 2013, India performed another execution and, in 2014, again voted against the General Assembly draft resolution calling for a moratorium on the death penalty.

25. The Special Rapporteur recommended that India consider placing a moratorium on the death penalty with a view to abolishing it and that legislation be reviewed to provide that the death penalty may only be imposed for the most serious crimes, such as intentional killing. The State is again called upon to consider implementing these recommendations as a priority. The Special Rapporteur welcomes the fact that the Law Commission of India is undertaking a research project on the death penalty. As part of that process, in May 2014, the Commission published a consultation paper[11] on capital punishment, including a detailed questionnaire and an invitation to submit written suggestions, comments and input into the study. The Commission intends to collect data relating to the death penalty from various courts and prison authorities, and may include the research assistance of law schools.

26. The Special Rapporteur welcomes the recent decision of the Supreme Court in the matter of *Shatrughan Chauhan* v. *Union of India*,[12] by which the Court held that the death sentence of a condemned prisoner could be commuted to life imprisonment on the basis of a delay on the part of the Government in deciding a mercy plea. The Court held that the prolonged delay in implementing the death sentence had a dehumanizing effect, which in turn had the constitutional implication of depriving a person of his/her life in an unjust, unfair and unreasonable way so as to offend the fundamental right to life under article 21 of the Constitution. In so doing, the Court commuted the death penalty to life imprisonment for 15 death row inmates. The Court further held that mental illness was one of the supervening circumstances that warranted commutation of a death sentence to life imprisonment.

[11] Available from www.deathpenaltyindia.com/external-resources/.

[12] 2014 3 SCC 1. See also *Union of India* v. *V. Sriharan @* Murugan, 2014 4 SCC 242.

IV. Violations of the right to life by non-State actors

A. Deaths resulting from attacks by armed groups

27. The Special Rapporteur has expressed concern that non-State actors resorting to the use of deadly violence have threatened the lives and security of civilians and the security of India and strongly condemns the callous nature of these acts. The State has a duty to protect its people from such acts of violence, but should do so in accordance with international human rights standards.

B. Killings related to communal violence

28. In his country visit report, the Special Rapporteur noted that tension between various communities in India frequently resulted in incidents of communal violence. Numerous reports concerning major incidents of communal violence indicated an often wilful failure by State forces to protect citizens. The Special Rapporteur documented reports of apparent tolerance by State forces of attacks against religious minorities. More alarming were reports that State agents were actively involved in attacks on the lives and rights of such minorities. The Special Rapporteur highlighted statistics from 2011 that indicated that 91 people had died that year in incidents of communal violence (See A/HRC/23/47/Add.1, paras. 43 and 44). Statistics for 2013 indicate that the figure has only decreased slightly to 71 deaths.[13]

29. During the country visit, special attention was drawn to the high level of communal violence in Gujarat. In his report, the Special Rapporteur expressed concern at the lengthy and less than effective conduct of the inquiries carried out at that time into the events. He recommended that the Nanavati-Metha Commission, established in 2002 and appointed to investigate the events that took place in Gujarat that year, should ensure that their findings are published in a swift and transparent manner. At the time of drafting the present report, the Nanavati-Metha Commission had concluded its investigation, 12 years and more than 20 extensions later, and submitted its final report to the Chief Minister of Gujarat in 2014. The report has not been made public and the content of the report is unknown. The Special Rapporteur calls on the Government to make the Commission's full report public.

30. In the context of investigating and addressing communal violence, the Special Rapporteur mentioned in his country visit report the Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill of 2011, which aimed at preventing communal violence and ensuring accountability for the failure to prevent such violence and protect life and property. The Bill also introduced the principle of command and/or superior responsibility, and stipulated the rights of victims to reparations and remedies. The Special Rapporteur notes that the Bill has not been passed. The Special Rapporteur welcomes the statement made by the Prime Minister on 17 February 2015 expressing strong condemnation of religious violence and undertaking to act strongly in this regard.

[13] See National Crime Records Bureau, Ministry of Home Affairs, "Crime in India 2013 – Statistics", p. 331.

C. Practice affecting women's right to life

31. The Special Rapporteur welcomes the report of the Justice Verma Committee[14] and notes that the implementation of its recommendations has the potential to bring much-needed and effective change in preventing violence against women, by holding the State accountable, ensuring the necessary commitment and change required in both law and policy, as well as in the implementation thereof. In its comprehensive report, the Committee addresses all forms of violence against women; calls for police, electoral and education and perception reform; proposes a number of criminal law amendments, an emergency response system and the creation of a bill of rights for women; and suggests guidelines for medical examinations. While some steps have already been taken by the Government to implement the recommendations made by the Committee, these have not been without criticism, and much more is needed – a fact that has been recognized by the State.

32. In his country visit report, the Special Rapporteur called upon the State to review its criminal legislation to ensure that all gender-based killings receive high sentences, possibly in the form of life imprisonment. The recommendations of the Justice Verma Committee, as well as some amendments that have already been made to India's Criminal Law, show that positive steps are being taken.

33. However, the Special Rapporteur is concerned that the Criminal Law (Amendment) Bill passed by parliament through an amendment to the Penal Code allows for the death penalty to be imposed for repeat offenders of rape and in cases of brutal rape that render the survivor in a vegetative state. This is not in compliance with the "most serious crime" requirement under international law and goes against the recommendation of the Justice Verma Committee that life imprisonment be imposed where rape results in the death or the persistent vegetative state of the victim. While the attempt by the State to seriously address acts of violence perpetrated against women is commended, the Special Rapporteur does not encourage the imposition of the death penalty in such cases.

Dowry deaths, "honour" and witch killings

34. In his country visit report, the Special Rapporteur recommended that the State require that the police, judiciary and general public undertake increased sensitization and orientation programmes in respect of all forms of killings of women, especially in the areas most affected (see A/HRC/23/47/Add.1, para. 119).

35. The Special Rapporteur and the Committee on the Elimination of Discrimination against Women have expressed concern at the extent of dowry deaths in India. The 2013 National Crime Records Bureau statistics reflect a very small reduction in the number of dowry deaths,[15] although the figures reported by the Bureau in 2011 and 2013 may not fully reflect the scope of the problem, owing to underreporting. The Special Rapporteur supports the call made by the Committee in 2014 for the State to implement systemic and sustained action that would lead to the elimination of stereotypes associated with dowry deaths as well as the practice itself (see CEDAW/C/IND/CO/4-5, para. 20). The Special Rapporteur also supports the recommendation of the Justice Verma Committee that all marriages in India, irrespective of the personal laws under which such marriages are solemnized, be mandatorily registered in the presence of a magistrate, who should ensure that the marriage

[14] Available from www.prsindia.org/uploads/media/Justice%20verma%20committee/js%20verma%20committe%20report.pdf.

[15] See National Crime Records Bureau, Ministry of Home Affairs, "Crime in India 2013 – Statistics", p. 387.

has been solemnized without any demand for dowry and with the full and free consent of both partners.

36. "Honour" killings, as documented in the country visit report, remain a problem in India. The Justice Verma Committee addressed the practice of such killings and concluded that the State must ensure that village councils, also known as "Khap Panchayats", and similar institutions do not interfere with the choices made by men and women in respect of marriage.

37. The phenomenon of witch killings in parts of India was observed and documented by the Special Rapporteur in his country visit report (see A/HRC/23/47/Add.1, para. 61). The practice, which is almost exclusively directed against women, was reported to be most prevalent in poorer and marginalized communities. The Special Rapporteur welcomes the response of the State that killings motivated by accusations of witchcraft are acknowledged and tackled at the local level by State authorities (see A/HRC/23/47/Add.7, para. 2).

38. The Committee on the Elimination of Discrimination against Women expressed its concern in 2014 over persistent traditional practices that contribute to the dangerous gender-based stereotypes surrounding witchcraft. The Committee expressed disappointment at the State's insufficient actions to systemically and consistently modify and eliminate the harmful stereotypes that contribute to killings motivated by allegations of witchcraft (see CEDAW/C/IND/CO/4-5, para. 20). In the country visit report, it was noted that legislation against witch-hunting existed in some parts of India. However, concern exists over the adequacy of the punishment and of exposing women accused of witchcraft to stigma, public humiliation, violence and, in most severe cases, death. Further challenges include witnesses who are often unwilling to testify against offenders owing to societal pressure and fear of being associated with a witch, and instances where the witness considers death as an appropriate punishment. Furthermore, it was reported to the Special Rapporteur that women from rural areas and with no financial means faced severe challenges in gaining access to justice, including owing to the reluctance of the police to register and investigate their cases.

V. Other challenges

A. Fight against impunity

39. In his country visit report, the Special Rapporteur documented various factors that contribute to the challenge of impunity in India. In order to address some of those challenges, he recommended that legal barriers for the prosecution of public servants be removed, including the requirement for prior sanction from the Government, and that section 197 of the Criminal Procedure Code be reviewed (see A/HRC/23/47/Add.1, para. 103). Pursuant to the recommendation of the Justice Verma Committee, the Special Rapporteur welcomes that an explanation has been added to section 197 (1) of the Criminal Procedure Code, to clarify that no prior sanction is necessary for the prosecution of public servants who are accused of sexual offences.[16] However, for all other crimes, the prior sanction provision continues to be a major hurdle for victims in securing remedies for human rights violations.

40. The Special Rapporteur recommended that the State ensure that command and/or superior responsibility be applied for violations by security officials of the right to life, and

[16] See www.prsindia.org/uploads/media/Criminal%20Law,%202013/Criminal%20Law%20%28A%29,%202013.pdf.

that the establishment and effective functioning of the Independent Police Complaints Authorities should be made a priority in all states (see A/HRC/23/47/Add.1, paras. 109 and 113). The Special Rapporteur regrets that, according to the information received, that responsibility remains absent.

41. In his country visit report, the Special Rapporteur recommended that promotions and other types of awards for security officers suspected to have been involved in unlawful killings should not be granted until the facts are fully clarified (ibid., para. 112). The Special Rapporteur notes the order of the Supreme Court in relation to encounter killings, in the matter of *People's Union for Civil Liberties (PUCL) & Anr.* v. *State of Maharashtra & Ors.*,[17] that "no out-of-turn promotion or instant gallantry rewards shall be bestowed on the concerned officers soon after the occurrence. It must be ensured at all costs that such rewards are given/recommended only when the gallantry of the concerned officers is established beyond doubt".

42. The Special Rapporteur welcomes the order of the Supreme Court and calls upon the Government to ensure its full and proper implementation. He notes with concern reports that police officers who have been suspended upon their arrest in cases of suspected extrajudicial killings and charged with extrajudicial killings have been reinstated in senior positions in the police force by the State. The Special Rapporteur is concerned that this will encourage impunity and may impede the criminal trials against the reinstated officers.[18]

43. The Special Rapporteur also recommended that the Government put in place a mechanism to regularly review and monitor the status of implementation of the directives of the Supreme Court and the National Human Rights Commission guidelines on arrest, encounter killings, and custodial violence and death (see A/HRC/23/47/Add.1, para. 108). The Special Rapporteur has been informed that, so far, no mechanism has been put in place to undertake the review and monitoring as recommended.

44. The country visit report included some of the challenges in the accountability process, for which it was recommended that the State consider launching a process of reflection on the need to reform its judiciary with the aim of reducing the length of judicial proceedings and strengthening the independent functioning of the judiciary (see A/HRC/23/47/Add.1, paras. 67 and 125). The Special Rapporteur is not aware of any such process, as recommended, being undertaken.

45. The Special Rapporteur recommended that the State ensure, in addition to the payment of compensation to the victims or their families, that criminal investigations, prosecutions and trials be launched and conducted in a swift, effective and impartial manner in all cases of unlawful killings, irrespective of the status of the perpetrator. The recommendation was made on the basis of concern expressed after the country visit, regarding cases involving unlawful killings, that the practice of paying compensation to victims or their families has often replaced prosecution (ibid., paras. 73 and 111). The Special Rapporteur notes the order of the Supreme Court in *People's Union for Civil Liberties (PUCL) & Anr. v. State of Maharashtra & Ors.*, that compensation be paid under section 357-A of the Criminal Procedure Code. While compensation is crucial in redressing violations, it should never replace the investigation and prosecution of alleged perpetrators. The investigations and prosecutions must be launched in a swift, effective and impartial

[17] Available from http://supremecourtofindia.nic.in/outtoday/ar12551999.pdf.

[18] Reports indicate that police officials charged for the suspected unlawful killing of Ishrat Jahan, Javed Sheikh, Amjadali Rana and Jishan Johar, as well as police officials charged for the suspected unlawful killing of Sohrabuddin Sheikh, Kausarbi and Tulsiram Prajapati, were reinstated in the police service by the State of Gujarat in February 2015.

manner. Examples of protracted investigations and prosecutions have been brought to the attention of the Special Rapporteur, including:

- The ongoing trial of 19 members of the Provincial Armed Constabulary for the alleged unlawful killings of 42 Muslim men in 1987[19]
- The delay in the commencement of the trial of officers implicated in the 2004 unlawful killing of four civilians, including a young woman, despite the filing of a charge sheet by the Central Bureau of Investigation[20]

46. The Special Rapporteur recommended that the National Human Rights Commission issue guidelines on the conduct of inquests and autopsies in all cases of suspected unlawful killings (see A/HRC/23/47/Add.1, para. 122). At the time of writing the present report, the Special Rapporteur was not aware of any steps taken in this regard.

B. Killings of vulnerable persons

1. Scheduled castes and tribes and other marginalized communities

47. In his country visit report, the Special Rapporteur noted that, according to the National Crime Records Bureau, 35 murders had been committed in 2011 for caste-related reasons (ibid., para. 77). In 2013, according to the Bureau, the figure had decreased to 32 murders.[21] The figures quoted by the Bureau differ substantially from those provided by non-governmental organizations. The Special Rapporteur recommended that existing criminal legislation be reviewed to ensure that perpetrators of killings against members of lowers castes or tribes receive higher sentences, perhaps life imprisonment (see A/HRC/23/47/Add.1, para. 105).

48. The Special Rapporteur also noted with concern that the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989 did not incorporate Dalit Muslims and Christians into the definition of scheduled castes and tribes. A recommendation was made that the legislation should be reviewed to extend the definition (see A/HRC/23/47/Add.1, para. 104). The Committee on the Elimination of Discrimination against Women noted in 2014 that Dalit women were particularly vulnerable as they faced multiple forms of discrimination presenting barriers to justice and that poor implementation of the Act was of concern (see CEDAW/C/IND/CO/4-5, para. 10 (d)). The Special Rapporteur is aware of the recent passing of the Constitution (Scheduled Castes) Orders (Amendment) Bill, 2014, and welcomes the inclusion of additional communities to the list of scheduled castes, but reiterates the importance of ensuring the protection of all marginalized communities in practice through effective implementation of the related legislation, as well as the conduct of relevant education and awareness-raising campaigns reaching out to all communities.

49. The Special Rapporteur welcomes the introduction of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Bill of 2014, which includes new categories of offences; specifies the duties of a public servant, including to register a complaint or First Information Report; provides that the Exclusive Special Courts must be established at the district level to try offences; and adds a chapter on the rights of victims

[19] See http://infochangeindia.org/human-rights/features/hashimpura-the-massacre-that-everyone-forgot.html.

[20] See http://indianexpress.com/article/india/gujarat/cop-accused-by-cbi-of-firing-at-ishrat-is-back-at-work/.

[21] See National Crime Records Bureau, Ministry of Home Affairs, "Crime in India 2013 – Statistics", p. 331.

and witnesses, including taking immediate action in respect of any complaint relating to the harassment of a victim, informant or witness. Effective implementation of this legislation remains essential.

2. Human rights defenders

50. In his country visit report, the Special Rapporteur expressed concern over the increased targeting of human rights defenders, by both State and non-State actors. Journalists and human rights defenders often fall victim to the violence between armed groups and the Government. The State indicated during the universal periodic review in 2012 that existing legislation was in place to protect human rights defenders. It further noted that human rights defenders had direct access to the Indian Supreme Court for matters concerning human rights violations and that there were several existing measures established by the National Human Rights Commission that aimed to protect human rights defenders (see A/HRC/21/10, para. 81).

51. The Special Rapporteur welcomes the recently adopted Whistle Blowers Protection Act, 2014, as a positive measure taken by the State in the protection of human rights defenders. The Act sets up a mechanism to receive complaints of corruption or wilful misuse of power by a public servant and provides safeguard measures against the victimization of a complainant. The Act, however, does not provide any penalty for victimizing a complainant and the exposure to further harassment.

3. Protection of victims and witnesses

52. In his country visit report, the Special Rapporteur recommended that the State establish an effective witness and victim protection programme (see A/HRC/23/47/Add.1, para. 116). No programme has yet been created by the State.

53. The Special Rapporteur notes the recommendation by the Justice Verma Committee that the State immediately implement measures of special care to ensure the safety of female complainants and witnesses in cases of sexual assault by armed personnel. The inclusion of a chapter on the rights of victims and witnesses in the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Bill of 2014 is a welcome step.

54. The Special Rapporteur has been informed of instances where the Supreme Court has filed petitions, with the assistance of human rights lawyers, requesting the protection of witnesses or victims of violence. For example, the Supreme Court directed that seven women survivors of gang rape during communal violence in Uttar Pradesh in 2013 be provided with two security personnel each until the completion of the trial, or until each of the women so desires.[22] While this is a positive step, access to legal recourse may be more difficult for some individuals, especially those from poorer and marginalized sections of society. Furthermore, the Special Rapporteur has been informed that the security cover provided often falls short of constituting a comprehensive witness protection programme.

55. The Special Rapporteur has also been informed that the State has been working with the United Nations Office on Drugs and Crime, in partnership the Counter-Terrorism Committee Executive Directorate, on strengthening the protection and assistance of witnesses and victims of terrorism. The State has a central scheme for assistance to the families of the victims of terrorism.

---

[22] See *Mohd Haroon* v. *Union of India* and Ors. 2014 5 SCC 252.

VI. The role of Human Rights Commissions

56. In his country visit report, the Special Rapporteur noted the important work that had been undertaken by the National Human Rights Commission in the protection of the right to life in India. He also documented some of the impediments faced by the Commission in doing so (see A/HRC/23/47/Add.1, paras. 88–90).

57. In order to strengthen the National Human Rights Commission, the Special Rapporteur recommended that the State amend section 19 of the Protection of Human Rights Act to provide the Commission with express authorization to investigate members of the armed forces for alleged human rights violations. The Committee on the Elimination of Discrimination against Women echoed this recommendation in 2014 (see CEDAW/C/IND/CO/4-5, para. 13 (c)). No steps have been taken by the State to amend section 19.

58. The Special Rapporteur also recommended that a legal basis should be put in place to enable the extension of the period of one year under which the National Human Rights Commission can consider cases. The Special Rapporteur has been informed that no measures have been taken to extend the one-year limitation. These provisions continue to deprive victims from gaining access to the protection of the Commission.

59. In his country visit report, the Special Rapporteur recommended that the independence and the functioning of State human rights commissions be reviewed to ensure compliance with the Principles relating to the status of national institutions (Paris Principles) (see A/HRC/23/47/Add.1, para. 123). The Special Rapporteur is not aware of any such review under way in the State.

VII. Conclusions

60. **India has taken certain positive steps to prevent the occurrence of extrajudicial killings, including through the adoption of a number of guidelines and measures by the courts and the National Human Rights Commission. Some positive legal reforms have taken place, while others are currently before parliament. Various committees and commissions have been appointed to address the occurrence of unlawful killings and violence against particular groups, which has resulted in important recommendations being made.**

61. **Cases of extrajudicial killings continue to be reported by State actors and non-State actors alike. Impunity remains a serious problem and the lack of accountability in the majority of instances of State actors is a principal concern. Legislation and policy, such as the Armed Forces (Special Powers) Act and similar, remain a real impediment to proper accountability and should be promptly repealed or amended. There is a need for fully independent bodies to be established to ensure that investigations are properly conducted and perpetrators are held to account.**

62. **Vulnerable and marginalized groups must be protected from all forms of violence, including lethal violence, and institutions tasked with monitoring, investigating and prosecuting the perpetrators of such violence must be strengthened. There is a need to put in place measures to address the barriers faced by vulnerable and marginalized groups in gaining access to justice.**

Appendix

Summary of follow-up to each recommendation[a]

A. Violations of the right to life by State actors

1. **India should swiftly enact the Prevention of Torture Bill and ensure its compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.**

This recommendation has not been implemented.

2. **India should repeal, or at least radically amend, the Armed Forces (Special Powers) Act and the Jammu and Kashmir Armed Forces (Special Powers) Act, with the aim of ensuring that the legislation regarding the use of force by the armed forces provides for the respect of the principles of proportionality and necessity in all instances, as stipulated under international human rights law. It should also remove all legal barriers for the criminal prosecution of members of the armed forces.**

This recommendation has not been implemented.

3. **While waiting for the necessary amendment or repeal of the Armed Forces (Special Powers) Act, it should be ensured that the status of a "disturbed area" under the Act is subject to regular review – for example, every six months – and a justified decision is made on its further extension.**

This recommendation has not been implemented.

4. **Section 46 of the Criminal Procedure Code and legislation in all states regarding use of force, including the exceptional use of lethal force, by all security officers should be reviewed to ensure compliance with international human rights law principles of proportionality and necessity.**

This recommendation has not been implemented.

5. **Section 197 of the Criminal Procedure Code should be reviewed in order to remove any legal barriers for the criminal prosecution of a public servant, including the need for prior sanction from the Government before cognizance can be taken of any offence by a public servant for criminal prosecution.**

This recommendation has been partially implemented.

6. **The Indian legislation regarding the imposition of the death penalty should be reviewed to provide that the death penalty may be imposed for the most serious crimes only, namely, only for those crimes that involve intentional killing.**

This recommendation has been partially implemented.

7. **India should consider placing a moratorium on the death penalty in accordance with General Assembly resolutions, with a view to abolishing it.**

This recommendation has not been implemented.

8. **India should ensure that the registration of First Information Reports is prompt and made mandatory in all cases of unlawful killings and death threats. The**

[a] See A/HRC/23/47/Add.1, paras. 96–126.

authorities should put in place an independent mechanism to monitor the registration of such Reports following any request to do so, and to punish law enforcement officials who refuse to register them.

This recommendation has not been implemented.

9. **India should ensure that command and/or superior responsibility is applied for violations of the right to life by security officers.**

This recommendation has not been implemented.

B. Violations of the right to life by non-State actors

10. **All vigilante groups and civilians recruited to perform military or law enforcement tasks, and who are not part of the regular security forces, should be dissolved and prohibited with immediate effect.**

Sufficient information has not been provided to enable assessment of progress.

11. **The protection of civilians in all instances of violence should constitute the ultimate priority. All sides involved in armed activities should immediately cease attacking civilians, including members of tribes and castes, human rights defenders and journalists. While having the duty to protect its people from the attacks perpetrated by various non-State actors, the Indian authorities should ensure its acts do not target civilians by any means, and are directed in a very precise manner at neutralizing violent non-State actors.**

Sufficient information has not been provided to enable assessment of progress.

C. Fight against impunity

12. **India should put in place a mechanism of regular review and monitoring of the status of implementation of the directives of the Supreme Court and the National Human Rights Commission guidelines on arrest, encounter killings, and custodial violence and death.**

Sufficient information has not been provided to enable assessment of progress.

13. **The establishment and effective functioning of the independent Police Complaints Authorities should be made a priority in all states.**

Sufficient information has not been provided to enable assessment of progress.

14. **Compensation in cases of killings cannot play the role of replacement for criminal prosecutions and punishment. Alongside payment of compensation to the victims or their families, India should ensure that criminal investigations, prosecutions and trials are launched and conducted in a swift, effective and impartial manner in all cases of unlawful killings, irrespective of the status of the perpetrator.**

This recommendation has been partially implemented.

15. **Promotions and other types of awards for security officers suspected to have been involved in unlawful killings, including through encounters, should not be granted until a proper clarification of facts.**

Sufficient information has not been provided to enable assessment of progress.

16. **Autopsies should be carried out in conformity with international standards, and families of victims should have full and easy access to autopsy reports, death**

certificates and other relevant documentation to allow them to proceed with the closure of the cases.

Sufficient information has not been provided to enable assessment of progress.

17. **The Nanavati-Mehta Commission, and all currently functioning commissions of inquiry on various violations of the right to life, should ensure that their findings are published in a swift and transparent manner.**

This recommendation has not been implemented.

18. **India should consider launching a process of reflection upon the need to reform its judiciary with the aim of reducing the length of judicial proceedings and strengthening the independent functioning of the judiciary.**

Sufficient information has not been provided to enable assessment of progress.

19. **A credible Commission of Inquiry into extrajudicial executions in India, or at least the areas most affected by extrajudicial executions, which inspires the confidence of the people, should be appointed by the Government. The Commission should also serve a transitional justice role. It should (a) investigate allegations concerning past and recent violations of the right to life; (b) propose relevant measures to tackle them; and (c) work out a plan of action for the future to eradicate practices of extrajudicial executions. The Commission should submit recommendations on (a) legal reform; (b) the reform of State structures, including security bodies; and (c) the fight against impunity. It must complete its work within a reasonably short period. The scale of the task may require some priority areas of investigation to be determined.**

This recommendation has been partially implemented.

D. Killings of vulnerable persons

20. **The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act should be reviewed with the aim of extending its scope to Dalit Muslims and Dalit Christians.**

This recommendation has been partially implemented.

21. **The criminal legislation should be reviewed to ensure that all gender-based killings, as well as killings of any member of a tribe or lower caste receive high sentences, possibly under the form of life imprisonment.**

This recommendation has been partially implemented.

22. **An effective witness and victim protection programme should be established.**

This recommendation has not been implemented.

23. **Information and awareness-raising campaigns should be launched to raise the level of knowledge of human rights and access to justice of the public at large, with a particular focus on vulnerable persons such as women and members of tribes and lower castes. Legal aid mechanisms for these vulnerable persons should be devised to enable them to seek protection, justice and redress in cases of violation of their rights.**

Sufficient information has not been provided to enable assessment of progress.

24. **Increased sensitization and orientation programmes in respect of all forms of killings of women should be undertaken for the police, judiciary and the public at large, especially in areas of the country which are most affected.**

Sufficient information has not been provided to enable assessment of progress.

E. The National Human Rights Commission

25. **Section 19 of the Protection of Human Rights Act should be amended to provide the National Human Rights Commission with the express authorization to investigate members of the armed forces for alleged human rights violations.**

This recommendation has not been implemented.

26. **A legal basis should also be put in place to enable the extension of the period of one year under which the National Human Rights Commission can consider cases.**

This recommendation has not been implemented.

27. **The National Human Rights Commission should issue guidelines on the conduct of inquests and autopsies in all cases of unlawful killings.**

This recommendation has not been implemented.

28. **The independence and functioning of State human rights commissions should be reviewed to ensure compliance with the Principles relating to the status of national institutions.**

This recommendation has not been implemented.

F. Co-operation and engagement with international organizations

29. **The practice of inviting United Nations special procedures should continue, especially in areas where international concern has been expressed, such as torture, counter-terrorism measures, enforced disappearances and minority rights. The recommendations made in 2012 by the Special Rapporteur on the situation of human rights defenders should be given serious consideration with a view to their implementation.**

This recommendation has been partially implemented.

30. **Ratification of the following treaties should take place promptly: (a) the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; and (b) the International Convention for the Protection of All Persons from Enforced Disappearance.**

This recommendation has not been implemented.

31. **Ratification of the following instruments should be considered: (a) the two Optional Protocols to the International Covenant on Civil and Political Rights; (b) the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women; (c) the Rome Statute of the International Criminal Court; and (d) the two Protocols additional to the Geneva Conventions.**

This recommendation has not been implemented.